

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TYLER HERMAN,

Plaintiff,

v.

SIG SAUER, INC.,

Defendant.

Civil Action No.: CIV-20-94-R

**DEFENDANT SIG SAUER, INC.'S RESPONSE AND OBJECTION TO
PLAINTIFF'S MOTION FOR DISMISSAL WITHOUT PREJUDICE**

Defendant Sig Sauer, Inc. ("Defendant") respectfully submits this Response and Objection to Plaintiff's Motion for Dismissal Without Prejudice [Doc. 27] and states:

1. Plaintiff filed his Complaint in this action on February 3, 2020. [Doc. 1.]
2. Plaintiff now seeks a dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2), which provides that in the absence of a stipulated dismissal signed by all parties, once the opposing party has served an answer, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."
3. "A plaintiff does not have an absolute right to dismiss and action," and "[a] motion by a plaintiff to dismiss under Rule 41(a)(2) after an answer has been filed rests in the sound discretion of the Court." *Chase v. Ware*, 41 F.R.D. 521, 521 (N.D. Okla. 1967).
4. Though Plaintiff's Motion does not state the reasons for the requested dismissal, the docket indicates that Plaintiff's current counsel is seeking to withdraw (and indeed has previously withdrawn) due to engagement of employment in a firm that makes

representing Plaintiff impossible and would possibly create a conflict of interest, but Plaintiff has not yet secured new counsel. *See* Unopposed Motion to Withdraw as Counsel of Record [Doc. 18], Order granting Doc. 18 [Doc. 20], Order requiring Plaintiff to enter appearance or proceed *pro se* by September 1, 2020 [Doc. 22], Entry of Appearance of prior counsel [Doc. 23].

5. Defendant objects to the dismissal of this action on the basis that Defendant has already spent time and resources defending this action. For example, Defendant has comprehensively responded to the 101 allegations in Plaintiff's Complaint, prepared motions for *pro hac vice* admission for out-of-state counsel, and participated in the preparation of a Joint Status Report and Discovery Plan.

6. Should Plaintiff re-file his action, Defendant would be forced to duplicate each of these actions unnecessarily.

7. Moreover, the incident at issue in this lawsuit is alleged to have occurred in February 2018. *See* Complaint [Doc. 1], at p. 1. Plaintiff did not commence this action until February 2020. Should Plaintiff delay in re-filing his claims, the relevant evidence, including potential witness testimony, would continue to grow stale, prejudicing Defendant's ability to prepare its defense.

8. Because the parties discussed the possibility of a dismissal of this action during their Scheduling Conference before the Court on October 8, 2020, the Court has not yet set scheduling order deadlines. *See* Scheduling Order [Doc. 26]. Accordingly, no current deadlines would be affected by the Court's denial of Plaintiff's Motion and Plaintiff's ongoing pursuit of new counsel.

9. Nevertheless, if the Court is inclined to take action at this time, Defendant proposes that a 90-day administrative stay would be more appropriate than dismissal and would be sufficient to preserve the status quo while Plaintiff seeks new counsel.

For these reasons, Defendant respectfully requests Plaintiff's Motion for Dismissal Without Prejudice be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2020, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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